

CITY AND COUNTY OF SAN FRANCISCO



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August 2, 2001

RECEIVED  
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SUPERINTENDENT'S OFFICE

Mr. Brian O'Neill  
Superintendent, Golden Gate National Recreation Area  
Fort Mason, Building 201  
San Francisco, CA 94123

Re: Status of Rulemaking Regarding Dogs at the GGNRA

Dear Mr. O'Neill:

Thank you for meeting with me and Colleen Crowley, Aide to Supervisor Leland Yee, on June 8, to discuss amendment of the 1975 Agreement between the City and the Department of the Interior executed in contemplation of transfers of City land to the Golden Gate National Recreation Area ("GGNRA"). During that meeting we also discussed some questions that the members of the Board of Supervisors' Neighborhood Services and Parks Committee would like you to answer in order to assist them in understanding the GGNRA's plans with respect to the closures of land at Fort Funston and the policy regarding off-leash dogs. I have set forth my recollection of our June 8 discussion below. Please respond with any corrections, additions or comments so that I can transmit an accurate reflection of your views to the Committee.

**Rulemaking Regarding Dog Leash Policies**

On February 9, 2001, you informed the Board of Supervisors, through the Clerk of the Board, that the GGNRA's 1979 dog policy is null and void because it is inconsistent with a National Park Service ("NPS") regulation. That regulation requires that pets be physically confined or kept on leash within areas under the jurisdiction of the NPS. (36 CFR § 2.15(a)(2)). Your February 9 letter noted that in light of that regulation the GGNRA has no authority to designate portions of its land for off-leash use. You also noted that the GGNRA was examining options for modifying the existing regulation to allow off-leash use, and that such modification would require approval from NPS headquarters.

On March 21, 2001, the GGNRA issued a press release stating that the GGNRA had received approval from the NPS headquarters in Washington, D.C. to engage in a rulemaking process regarding dog leash policies in the GGNRA. The Neighborhood Service and Parks Committee of the Board wants to understand your timeline with respect to the rulemaking process.

The March 21 press release described that process as beginning with publication of an Advance Notice of Proposed Rulemaking (ANPR), which would be published in the Federal Register and would seek comment on whether there is a need to revise the present Department of the Interior Regulation. Your March 21 notice states that if the GGNRA determines that the comment

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received in response to the ANPR establishes the need for a revised rule, the GGNRA will engage in a rulemaking process, beginning with a notice in the Federal Register. At our June 8 meeting you and your staff explained that this could be a negotiated rulemaking or a standard rulemaking process. Either process could result in the publication of a proposed rule for notice and comment, and adoption of a final rule after approval by the NPS. In addition, the GGNRA might choose to take no action at all, thereby leaving the current regulation unaffected.

If the GGNRA chooses to utilize the negotiated rulemaking process and convene a negotiated rulemaking committee, it would, pursuant to the statutory requirements (5 U.S.C. §561 et seq.), publish a notice in the Federal Register, which would include a description of the subject and scope of the rule to be developed, a list of interests likely to be significantly affected by the rule, a list of persons that the GGNRA proposes to represent such interests on the committee, and an explanation of how a person may apply or nominate another person for membership on the committee. The negotiated rulemaking committee would then attempt to reach consensus on a proposed rule. If the GGNRA instead engages in the standard rulemaking process, it could develop the proposed rule internally.

When we discussed the timeline for the process on June 8, you and your staff stated that you were preparing a draft of the ANPR for submittal to NPS headquarters in Washington. You noted that this draft, which you expected to complete in 2 to 4 weeks, might include a statement of the issues and some alternatives to the current regulation, for discussion purposes. You indicated that you would send us a draft of the ANPR when it was ready for submission, and that review by NPS headquarters could take as long as three months. We have not yet received a draft of the ANPR.

On behalf of the Neighborhood Services and Parks Committee, we ask that you let us know, in writing: 1) if the draft ANPR has been submitted, and if not, when you expect to submit it; 2) the length of the comment period that you have proposed or will propose for the ANPR; and 3) how soon after that comment period expires the GGNRA will issue its decision about whether it will engage in a rulemaking process regarding dog leash requirements in the GGNRA. In addition, when we met on June 8 you stated that the GGNRA was preparing to hire an individual to manage the ANPR process and any rulemaking process that resulted from it. Please let us know what progress you have made in this regard.

#### **Nature of the November 28, 2000 Closure**

On November 28, 2000, the GGNRA announced its final decision to close 12 acres of Fort Funston to recreational use on a year-round basis. At the June 5, 2001 meeting of the Neighborhood Services and Parks Committee, some speakers stated that there had been some confusion, and perhaps inconsistent statements by the GGNRA, as to whether the closure is indeed permanent, i.e., year-round, or temporary, i.e., seasonal. Please clarify this issue, in writing, and, in addition, please let us know whether there is, at present, any time limit on the closure, or whether the affected areas will remain closed indefinitely.

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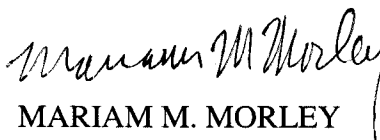
### **GGNRA Name Change**

As you know, in connection with the closure of lands at Fort Funston and the recent posting of signs requiring that dogs be kept on leash at Fort Funston, many San Franciscans have contacted the Board of Supervisors to express their view that although the GGNRA was established for the purpose of providing recreational and educational opportunities, the GGNRA is focusing on restoration and preservation of the natural habitat to the detriment of recreational interests. Consistent with this concern, the Neighborhood Services and Parks Committee received comment at its June 5, 2001 meeting about the GGNRA's use of the term "Golden Gate National Parks" on promotional materials, including posters. The speakers wondered whether the GGNRA's use of this term reflects a change in the GGNRA's focus or mission, and whether the GGNRA is considering changing its name to the "Golden Gate National Parks". At our June 8 meeting, you stated that the GGNRA is not considering a name change, and we briefly discussed the context of the use of the term "Golden Gate National Parks." Please provide us with an explanation, in writing, of when and why the term "Golden Gate National Parks" is used in connection with lands under the jurisdiction of the GGNRA so that we can transmit it to the Committee.

Please call me if you have any questions about the above. I look forward to hearing from you.

Very truly yours,

LOUISE H. RENNE  
City Attorney



MARIAM M. MORLEY  
Deputy City Attorney

cc: Hon. Leland Yee  
Hon. Tony Hall  
Hon. Gerardo Sandoval  
Nicole Walthall, Esq.